

REMARKS

Entry of the foregoing, re-examination and reconsideration of the subject matter identified in caption, as amended, pursuant to and consistent with 37 C.F.R. § 1.116, and in light of the remarks which follow, are respectfully requested.

Claims 1-36 and 56-63 have been canceled without prejudice or disclaimer. Claims 26 and 55 were previously canceled. Applicants respectfully submit that entry of the Amendment, after final, is proper, because the Amendment merely cancels various rejected claims. Upon entry of the Amendment, claims 37-54 and 64-67 will be all the claims pending in the application.

I. Response to Rejection under 35 U.S.C. § 112, First Paragraph

Claims 1-25, 27-38, 41-44, 47-54 and 56-63 were rejected under 35 U.S.C. § 112, first paragraph, as lacking written description.

Applicants respectfully submit that the rejection of claims 1-25, 27-36 and 56-63 are moot because these claims have been canceled.

Further, Applicants respectfully traverse the rejection of claims 37, 38 and 47-54. Specifically, independent claims 37 and 53 further define the term “unattractive sensation” as “at least one selected from the group consisting of stinging, pins and needles, itching, pruritus, hotness and pulling,” which is adequately described in the present specification, for example, paragraph [0057]. Accordingly, the Examiner is respectfully requested to reconsider and withdraw the rejection.

II. Response to Rejections under 35 U.S.C. § 103(a)

a. Claims 1-17, 20-25, 27-38, 41-44 and 48-54 were rejected under 35 U.S.C. § 103(a) as being obvious over Robinson et al., *Contact Dermatitis*, "Evaluation of a quantitative clinical method for assessment of sensory skin irritation," 45:205-213, 2001.

Applicants respectfully traverse the rejection for the reasons of record and the following additional reasons.

Independent claim 37 recites a non-therapeutic method of identifying persons having sensitive skin, the method comprising: 1) applying to a skin area of an individual an aqueous or aqueous-alcoholic solution, comprising a stimulant that is a capsaicinoid or a mustard oil at a concentration of between $1 \times 10^{-6}\%$ and $5 \times 10^{-4}\%$; and 2) deducing information regarding the skin reactivity or sensitivity of the individual as a function of the intensity of unattractive sensations perceived by the individual,

wherein the unattractive sensation is at least one selected from the group consisting of stinging, pins and needles, itching, pruritus, hotness and pulling.

Independent claim 53 recites a non-therapeutic method of identifying persons having sensitive skin, the method comprising: 1) applying to a skin area of an individual an aqueous or aqueous-alcoholic solution, comprising a stimulant that is a capsaicinoid or a mustard oil at a concentration of between $1 \times 10^{-6}\%$ and $5 \times 10^{-4}\%$; and 2) deducing information regarding the skin reactivity or sensitivity of the individual as a function of the intensity of unattractive sensations perceived by the individual,

wherein the capsaicinoid is a capsaicin, a homocapsaicin, a homodihydrocapsaicin, a nordihydrocapsaicin, or a dihydrocapsaicin, and

the unattractive sensation is at least one selected from the group consisting of stinging, pins and needles, itching, pruritus, hotness and pulling.

Robinson et al. attempts to develop a method for anticipating irritant potential of topical ingredients or products. It is clear throughout the article that individual subjects were tested regardless the sensitivity of their skin. The purpose of Robinson et al. is to characterize a product and not a population of subjects. Robinson et al. concluded that the "use of recall/imagined skin sensation perception data for prediction of actual reactivity to

chemical probes may have screening utility depending on the survey questions used" (see, Abstract).

Robinson et al. further explains that such a method (i.e., applying a product to be tested and asking for the intensity of the consumer's skin sensation), which has not been reduced to practice therein, would have the advantage of being less invasive than instrumental and bioassay procedures for identifying inflammatory markers (Abstract).

As noted above, the present application relates to a method of identifying a person with sensitive skin. Having sensitive skin is a permanent state characterized by sensitivity of skin to very low concentrations, such as $1 \times 10^{-6}\%$ and $1 \times 10^{-4}\%$ by weight, of a peripheral nervous system stimulant. The technical characteristics of the claimed subject matter are clearly defined as follows: applying $1 \times 10^{-6}\%$ and $1 \times 10^{-4}\%$ by weight of peripheral nervous system stimulants, e.g., capsaicinoid, on a subject, and noting factual sensations chosen amongst stinging, pins, needles, etc.

The Office Action alleged that one skilled in the art, through routine experimentation, could obviously optimize the dose of stimulant and lead to the invention (paragraph 13, page 5, of the Office Action).

Applicants respectfully disagree. Robinson et al. does not describe or fairly suggest the existence of sensitive skin, as used in the present application, which is not the purpose thereof. Furthermore, Robinson et al. does not correlate the high sensitivity to peripheral nervous system stimulant to sensitive skin. Thus, it would not have been obvious to a skilled artisan to try to vary a peripheral nervous system stimulant dose allowing the identification of sensitive skin, and particularly, to reduce the stimulant dose to identify a person with sensitive skin.

The Office Action also alleged that "the person of ordinary skill in the art would have been motivated to perform such test on sensitive skin to assess the response to various products and chemicals" (Office Action, page 6).

Applicants wish to point out that the claimed subject matter is not directed to the assessment of products and chemicals, but to the identification of subjects with sensitive skin.

In view of the foregoing, Applicants respectfully submit that the present claims are not obvious over Robinson et al., and thus the rejection should be withdrawn.

b. Claims 56-63 were rejected under 35 U.S.C. § 103(a) as being obvious over Robinson et al. in view of U.S. Patent No. 6,139,850 to Hahn et al.

Applicants respectfully submit that this rejection is moot because claims 56-63 have been canceled.

III. Conclusion

From the foregoing, further and favorable action in the form of a Notice of Allowance is believed to be next in order and such action is earnestly solicited. If there are any questions concerning this paper or the application in general, the Examiner is invited to telephone the undersigned at (202) 452-7932 at his earliest convenience.

Respectfully submitted,

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By: _____



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